in the absence of specific limitations in the constitution, as more limited in its dealings with municipal corporations than it really is, and states with altogether too much positiveness the rule that municipal corporations may not without legislative authorization engage in such undertakings as municipal lighting. This is a part of the law which as yet is by no means settled, but the courts would seem—an impression which one does not get from reading Mr. Abbott's book—to be gradually adopting a somewhat more liberal view as to municipal powers. Indeed whenever Mr. Abbott makes an excursion into the field of political science he leaves the impression of one who has read little written since the early part of the nineteenth century. Wayland, Paley and De Toqueville, whom he cites, are hardly to be regarded as the exponents of the best political thought of the present day. His concrete plea on page 1480 for more elective offices in our system is one that does not appeal to the modern student of municipal government.

But after all Mr. Abbott is to be judged as a lawyer rather than as a political scientist. In this capacity he has done much to lighten the labors of his co-students, and, apart from the defects to which attention has been called, has written a book which cannot fail to be most useful.

A TREATISE ON EQUITABLE REMEDIES. By J. N. POMEROY, JR. San Francisco: Bancroft, Whitney Co. 1905. pp. Vol. I, xxx, 952; Vol. II, xix, 953–1857.

In reviewing a book it seems but fair that the author's viewpoint should, if possible, be included among those from which the reviewer regards the work. But in the present case the reviewer finds this viewpoint all but undeterminable by reason of the somewhat conflicting statements of the author. In one place the preface declares that the books are put forth as a carrying out of his father's design to add one or more volumes on equitable remedies to the great work, Pomeroy's "Equity Jurisprudence." This calls for a rather high standard of excellence if the present volumes are to justify their production. But another prefatory sentence declares "that no pretension is made to those high qualities, both of style and original thought, which have given to my father's book its important place in our legal literature"; while the opening sentence of the preface asserts that: "The present treatise is an outgrowth of a desire to annotate the brief Part Fourth of Pomeroy's Equity Jurisprudence in a way that should secure to the important topics therein contained a treatment as ample as is accorded, in that work, to other parts of Equity." The author thus furnishes two standards (perhaps inconsistent) and, that the review may be fair, both will be considered.

If the books are to be regarded from the latter viewpoint—an annotated edition of the parent text—a short and complete criticism is that they are no such thing. About half the work might, by a stretch of the word *annotated*, be so classed, but the other half professes to be made up almost wholly of new material. In the annotated half of the treatise there is the following comparative paging between the parent text and the present one: Interpleader, 18 pages in the parent text and 27 pages in the present work; Reformation and Cancellation of Instruments, 7 pages and 30 pages respectively; Partition of Land, etc., 13 and 51;

Bills of Peace, practically untouched; Suits to Remove Clouds on Title, etc., 12 and 32; Suits to Compel Transfer or Issue of Stock, practically untouched; Foreclosure Suits, 7 and 76; Contribution, etc., 4 and 30; Suits for Accounting, 5 and 11; Partnership Bills, 0 and 12—a total increase of about two hundred pages. A by no means inconsiderable proportion of this additional space, is the result of placing in the present text many of the notes of the parent text (*e.g.* §§ 7, 8, 11, 45, etc.), and a further considerable proportion is the result of merely cumulative citations of modern cases. If the former had been left as notes, and the additional note matter had been carefully and discriminately condensed, it seems certain that the new matter might all have gone in as notes to the old text, and while the work so annotated would have been somewhat bulky it would not have been unwieldy. It is not discerned, therefore, how the publishing of two new volumes of approximately two thousand pages can be justified on the ground of annotating an original text.

In discussing the merits of the work, two divisions must be made: First, the so-called annotated portion covering the subjects already enumerated. Secondly, the portion, over one-half, and which is largely new matter, covering the subjects of Receivers, Injunctions and Specific Performance. The text in the first division consists, as already stated, chiefly of the parent text, filled out by its notes, and the resulting new text is, in all truth, "fearfully and wonderfully made." For an example as to the composition of the text, the chapter on Interpleader may be taken. This consists of twenty-five sections, in only five of which has the present editor placed any matter of his own; and only one of this five is entirely from his pen. The manner in which the parent text has been pieced together is sufficiently shown by the following: The "introduction," § 2 (entitled (1) First Group; Auxiliary and Provisional Remedies) is built up by two excerpts—one, a single sentence, is taken from § 171 of the chapter on the Exclusive Jurisdiction of Chancery in the older work, the words excerpted being but a part of the full sentence there; the other excerpt is taken from § 1319, the first paragraph (with the last sentence omitted) of the chapter on Interpleader. §§ 7 and 8 of the present work are built up of §§ 1393 and 1395 respectively, with portions of the notes of those sections in the older text; § 39 here comprises § 1320 of the older work, but the parts of § 1320 have been inverted, the last part of the section now coming first, and the balance of the section together with a note coming now at the end. Again a note may form an entire section by itself (see § 45). But these are not the worst features, for on occasion but a small part of the old sentence is taken and put forth as an independent sentence in the present work (see § 62 where a sentence of § 1320 in the original text has been lopped off at a comma, and made in the new text to do full service as a complete sentence).

There are two obvious objections to this sort of book making: (1) it has accomplished little more than might have been done by making a good index with cross references; and (2) it is by no means certain that a correct understanding of the meaning of the original text will be gained from sentences and parts of sentences thus wrenched from their context. If the work is to stand upon its merits it must, again, be on other parts than the *annotated*.

However, the author informs us that because of the great and growing importance of the two remedies, Appointment of Receivers and Injunctions, they have been given "more than half the space at my command," with the result that rather considerable treatises have been prepared upon these subjects, as also on Specific Performance. Will these justify their preparation?

An author has said: "It is, indeed, a serious thing to ask the world to read a book. It should never be done unless the book answers a purpose not fulfilled, or not so well fulfilled by some book already existing." (Burgess, Preface to Political Science and Constitutional Law.) This seems the true principle upon which a work must be judged, and the new matter in the two large volumes should meet this test.

As to the matter on Specific Performance, it must be said that the present author has given us, in the latest edition of Pomeroy on Contracts, a far more comprehensive and complete consideration than he now publishes. His chief addition in the present work is bringing the cases down to date. This has, however, been done for the English cases, and to some extent for the American cases also, by the recent edition of Fry. Certainly this part of the work might well have been confined to annotating the very excellent outline of specific performance which the original text contained.

It is possible to say little more than this on the chapter devoted to the Appointment of Receivers and Injunction, though some phases of recent judicial growth have received merited attention. But it must be doubted that much is added, even here, to our latest works on these subjects, and the additions are by no means of such a character as were made to the earlier works in equity when the "Equity Jurisprudence" was published. Moreover, certain features of the original text, both as to arrangement and substance, have been retained, though they were faulty, if not erroneous. A single example is sufficient to show their nature.

In the present text the whole treatment of the enforcement of negative covenants in contracts was given under the heading of Injunction. Indeed Professor Pomeroy practically ignored the subject in his separate work on Specific Performance. But Langdell has clearly set out, "Brief Survey of Equity Jurisdiction," that in strictness the only case of the actual specific performance of a contract is where it is enforced by injunction, since there the parties are actually made to perform the contract before its breach, while in the ordinary case the decree requires that the parties do what they had agreed to do though the contract itself has been wiped out by its breach. Even if this view should be denied its full effect by our author (but see §§ 270, 271) it certainly has sufficient merit to demand that no work on specific performance shall be complete which does not adequately treat it. This has not been done in the present work, it having been disposed of in a single paragraph of some twenty odd lines, § 775, the paragraph having a black letter heading—"Indirect Enforcement by Enjoining the Breach of Defendant's Negative Covenant" and discussing the question as depending on the principle of mutuality.

More specifically in this respect the author has failed to treat properly

the question of whether or not equity will, by injunction, restrain the breach of a contract which it will not enforce, the text taking the position that it will not. No discussion of underlying principles of the question is attempted. Of course if the contract be one with a negative term and the injunction sought is really a specific enforcement (see Langdell, supra) the two remedies are interdependent, or rather, one is the other; but this would not seem to be true in that large class of cases where equity refuses to decree the doing of an act. 6 COLUMBIA LAW REVIEW 362; *Singer Co.* v. *Union Co.* (1873) Fed. Cas. No. 12, 904 (cited and quoted by the author); *Standard Fashion Co.* v. *Publishing Co.* (1898) 157 N. Y. 60 (cited by the author); *Beck* v. *Light & Power Co.* (Ind. 1905) 76 N. E. 312.

Further, there is no adequate consideration (see note 16, § 275) of the principle of *King* v. *Dickeson* (1889) L. R. 40 Ch. D. 596, concerning the right of a grantee of land under building restrictions, to enforce those restrictions against his grantee when he has taken no covenant from such grantee (see the remarks of Lindley, L. J. on this point in *Mander* v. *Falcke* (1891) 2 Ch. D. 554, 556).

As to the application of the principle of restrictive covenants as to use of personal property, the author might have added to the case of *New York Bank Note Co.* v. *Hamilton Bank Note Co.* (1895) 83 Hun 393 (cited in note 40, § 284), the interesting case of *Murphy* v. *Christian Press Assoc. Pub. Co.* (1899) 38 App. Div. 426.

The reviewer regrets to conclude that the two volumes do not on their merits measure up to the test, and that while the author has put into the books much that is valuable, he might well have condensed the essential parts to annotations of the parent text, instead of adding his two tomes to the constantly increasing flood of commonplace legal literature.

INTERNATIONAL LAW AND DIPLOMACY OF THE RUSSO-JAPANESE WAR. By AMOS S. HERSHEY. New York: The Macmillan Company. 1906. pp. xii, 394.

Another very interesting book has here been added to the rapidly growing literature on the subject of this momentous struggle, furnishing fresh evidence of the importance of the international questions raised during the progress of the war. For surely no war in recent years has given rise to so many and such important questions in the field of International Law as has this war in the Far East. This was due in large measure to the character of the war and its location, fought as it was for the control of Manchuria and Korea and upon territory that was the property of neither belligerent, but which both desired to control. There is thus presented the anomalous condition of the territory of neutrals being made the battle ground of the belligerents. It was largely in view of this anomalous condition that Secretary Hay sent his famous note to the powers suggesting the limitation of the field of hostilities, and as a result of this condition that there arose many of the complaints of both contestants that neutral rights were being violated and neutral duties being left unfulfilled.